evident from the rapid and broad introduction of new technology and advanced services in markets where the government does not intervene in the distribution and pricing of products. In the last thirty years, color televisions, microwave ovens, VCRs, personal computers, CD players, e-mail, voice mail, and on-line banking – all of which were considered advanced when first introduced – have become ubiquitous and almost universally affordable, as economies of scope and scale have been achieved and market forces have forced price reductions. In each case, the developers and providers of these services or products were free to innovate, secure in the knowledge that they would not be subject to substantial regulatory compliance costs and that the potential rewards of their risk-taking would not be artificially limited.

The same free-market model unquestionably is the best way to assure the broadest, most rapid, and most timely deployment of "advanced telecommunications capability."[8] The capability to originate and receive advanced telecommunications exists today, thanks to the proliferation of transmission media capable of handling broadband communications. As the NOI acknowledges, advanced services may be transmitted over telephone networks, cable television systems, fixed and mobile wireless networks, over-the-air broadcasting, electric utility networks, and satellites.[9]

(...Continued)
any subsidies be explicit and competitively neutral.

[8] This term is "defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." 1996 Act, § 706(c)(1).

[9] NOI, ¶¶ 18-52. GTE disagrees with the finding in the *706 MO&O* that all advanced
(Continued...)

Indeed, competitors are already using all of these technologies to deliver "high-quality voice, data, graphics, and video telecommunications,"[10] and there is every indication that the availability of these services is in line with existing and forecasted demand.

Along these same lines, the Commission must be careful not to favor or deter any technology or class of providers.[11] The optimum delivery platform or platforms for any particular advanced service, customer group, and geographic area is best determined by the marketplace. As consumers become more sophisticated and services become more advanced, competitors will face tremendous pressure to develop efficient, affordable, and attractive delivery mechanisms. Any company that fails to do so will quickly lose out in the marketplace. After all, if GTE does not offer what customers want, there are a multitude of competitors – many of whom have greater resources than GTE – waiting in the wings. To name a few, AT&T/TCG/TCI/BT, MCI/WorldCom/MFS/Brooks/UUNet, and Sprint/Deutsche Telekom/France Telecom are all fully capable of providing any service to any customer almost anywhere in the world.

(...Continued)
services are telecommunications services. *706 MO&O*, ¶ 35. No one can confidently predict the future array of advanced services that will be developed and delivered, but it is clear that not all new products and services requiring advanced telecommunications capability will be telecommunications services. Rather, each advanced service must be analyzed in light of the statutory definitions.

[10] Section 706(c)(1).

[11] Nor should the Commission require that advanced telecommunications capability have particular technical characteristics; e.g., be either asymmetric or symmetric. *See* NOI, ¶ 75. Some advanced service may best be provided asymmetrically, and others symmetrically. Once again, the market will determine the ideal characteristics of the delivery platform.

The advanced services marketplace is intensely competitive, and the equipment used to provide advanced services is readily available in the marketplace. In addition, many of the competitors, as noted above, are global companies with tremendous access to capital. Nonetheless, the existing regulatory regime targets one class of competitors – the incumbent local exchange carriers ("ILECs") – with a host of burdensome and unnecessary obligations that impede their ability to innovate, invest, and respond to marketplace pressures. This intrusive and asymmetrical regulation of a single class of competitors, which enjoy no advantage over any other company providing advanced services, is the single biggest obstacle to the reasonable, timely, and widespread deployment of advanced telecommunications capability.

Against this background, GTE explains in Section II below that advanced telecommunications capability and services already are being deployed, and that the best way to maximize availability and affordability of these services is to allow the marketplace to function with the least possible government intervention. Section III.A discusses the disincentives to investment created by disparate, intrusive regulation of ILECs. Section III.B contains GTE's specific recommendations for removal of regulatory barriers to investment in and deployment of advanced telecommunications capability and services. In that Section, GTE urges the Commission to take the following action:

- Forbear from requiring ILECs to tariff their advanced service offerings.
- Reverse its determination that Digital Subscriber Line Access Multiplexers ("DSLAMs") and other non-bottleneck equipment used to provide advance services are network elements which may be subject to unbundling.

- Declare that ILECs need not make advanced services available for resale on a discounted basis.

- Refrain from adopting the hyper-separation requirements proposed in the *706 NPRM* and provide that ILEC affiliates meeting the modified *5th Report and Order* separation criteria will be considered non-dominant and non-incumbent.

- Work with state regulators to remove disincentives to investment by ILECs and other entities in the local loop, including class-of-service subsidies and geographic cost averaging requirements.

- Decline to impose additional restrictions on interactions between ISPs and ILECs or their affiliates.

- Assure nondiscriminatory access by all prospective providers, including ILECs, to new spectrum set aside for advanced services.

- Permit ILECs to introduce new switched access services without first petitioning for approval of new rate elements.

GTE respectfully submits that action consistent with these principles and recommendations will best advance the goals articulated by Congress in Section 706(b) of the 1996 Act.

II. THE MARKETPLACE, NOT REGULATION, WILL BEST PROMOTE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY ON A REASONABLE AND TIMELY BASIS.

A. Advanced Telecommunications Capability and the Services Based on that Capability Are Being Offered Today By a Wide Range of Providers.

Competitors already are using advanced telecommunications capability to provide a host of advanced services and service packages over a variety of delivery platforms. Examples include:

- AT&T and TCI have announced that, following their merger, they will upgrade TCI's cable infrastructure to accommodate two-way communication and

begin providing digital video services, digital telephony, and high-speed data to consumers by the end of 1999.[12]

- Sprint is deploying an "ION" network, which, "[b]y using ATM technology coupled with [Dense Wave Division Multiplexing] and its synchronous optical ring architecture ... has the ability to push its network intelligence into customer premises" and give "access to information services ... phone calls, Internet, [and] videoconferencing." According to Sprint, the new network will "give continuous access ... for voice, video, data, faxes, and other services" to both large businesses and, within 18 months, to consumers.[13]

- Cox, MediaOne, and other large cable operators are offering integrated voice and high-speed Internet access along with multichannel video programming.[14] Indeed, as the recent OPP report regarding Internet over Cable notes, "[t]he cable industry is in the midst of a transformation ... to two-way, interactive broadband systems ... which enable the industry to deliver a wide range of telecommunications and information services – including Internet access, telephony, and digital television."[15] Cox has further announced the launching of digital telephone service via cable in San Diego, providing voice, video, and data over a single network.

- SkyWave Inc. has just announced a new Internet telephony gateway that "seamlessly bridges H.323 IP networks with SS7 intelligent networks,"

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[12] Joint Release of AT&T and Tele-Communications, Inc., available at <http://www.att.com/press/0698/980624.cha.html>; *see also* Jared Sandberg and Thomas E. Weber, *A High Tech Vision Faces Big Hurdles*, Washington Post, June 25, 1998, at B1 (quoting AT&T Chairman C. Michael Armstrong as stating that "We can become a provider of broadband services that encompass telephony [and] entertainment").

[13] "Sprint Challenges Rivals With New Network, Seeks New Regulatory Treatment," *Communications Daily*, June 3, 1998, at 2-4. AT&T apparently plans to deploy a similar network. *See* "AT&T to launch high-speed network service," *Washington Times*, Sept. 10, 1998, at 1B.

[14] *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report*, 13 FCC Rcd 1034, 1063-69 (1998)

[15] B. Esbin, "Internet Over Cable: Defining the Future in Terms of the Past, OPP Working Paper #30 (August 1998), at 75 ("Internet Over Cable"). This Report goes on to describe the wide range of Internet services being offered over cable. *See id.* at 77-80.

enabling "carriers to integrate IP telephony into their current networks" and allowing them "to integrate new technology as the market evolves."[16]

- Direct Broadcast Satellite providers, with millions of customers, are offering video and Internet access. For example, Hughes DirecPC/DirecTV offers high-speed Internet access, called Turbo Internet Software, at speeds ranging from 200 to 400 kbps.[17]

- Incumbent local exchange carriers such as GTE, BellSouth, and Ameritech are offering video[18] and Internet access through affiliates, which also may resell voice service where permitted by state regulators.[19]

- LMDS providers are offering local and long distance telephony, Internet access, and video. For example, WinStar is deploying network equipment that will support "enhanced voice, video conferencing, native LAN-LAN interconnections, MPEG-2 video and high-speed Internet access on a single fully integrated local metropolitan area ATM transport network."[20] According to WinStar's President and Chief Operating Officer, as a result of the new

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[16] "SkyGate 99 Enables the Integration of IP Telephony and Intelligent Networks with H.323 and SS7 Interoperability," PRNewswire, Sept. 9, 1998.

[17] *See* <http://www.future-furnishings.com/DirectDuo/DirecDuof.html>; <http://www.direcpc.com/about/a36f.html>.

[18] In ¶ 27 of the NOI, the Commission inquires about ILECs' incentives to provide competitive MVPD service. GTE and other ILECs are extremely interested in entering this market, but have been frustrated in the past by overly intrusive regulation, such as the Commission's video dial-tone rules. The 1996 Act provides ILECs with the ability to provide cable service without being subject to Title II regulation, *see* 47 U.S.C. § 571. GTE believes this freedom will lead to additional investment by telephone companies and their affiliates in broadband infrastructure capable of supporting competitive MVPD services. *See, e.g.*, "U S WEST Gets Nod for Phoenix VDSL Service," *Telecommunications Reports*, Sept. 7, 1998, at 12.

[19] As discussed in section III below, one affirmative step the Commission can take to promote deployment of advanced telecommunications capability is to preempt state limitations on the ability of a CLEC affiliated with an ILEC to operate in the ILEC's service territory.

[20] *See* "WinStar and Hughes Network Systems Enter Strategic Relationship for Nationwide Deployment of Point-to-Multipoint Broadband Fixed Wireless Networks," <http://www.winstar.com/index/New.htm>.

equipment, "[f]or the first time, the resources and features of the much-heralded information superhighway will be affordable to nearly everyone, at speeds in excess of 200 megabits per second."[21]

For its part, GTE offers advanced services both through its existing ILEC affiliates,[22] and through other business units established to address consumer demand for integrated service packages.

B. Demand for and Deployment of Advanced Telecommunications Capability and Services Will Be Uneven at First, but the Availability of Such Infrastructure and Services Will Expand Rapidly if the Market Is Permitted To Function Without Undue Regulatory Intervention.

As with any new consumer product, demand for advanced services is developing unevenly. This most assuredly is not an indication of market failure. Rather, it reflects the simple fact that, during the initial stages of deployment, a critical mass of demand has not been achieved and efficiencies and economies of scale and scope have not been maximized.

For example, in many cases, businesses are the first adopters of new broadband technology, since they have the greatest need for high-speed transmission capabilities. As a result, carriers tend to make advanced telecommunications capability available first in areas with relatively high concentrations of business customers. This is not

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[21] *Id.* Similarly, Lucent Technologies is developing technology that would boost the capacity of fixed wireless networks by ten to twenty times. Scientists at Lucent's Bell Labs research arm said the technology will be a "substitute for traditional copper wires." "Bell Labs Discovers a Way To Boost Wireless Networks," *New York Times*, Sept. 10, 1998, at B6.

[22] GTE Telephone Operations, GTOC Tariff F.C.C. No. 1, Transmittal No. 1148 (GTE DSL Solutions - ADSL Service) (filed May 15, 1998).

universally true, however. GTE's ADSL offering, for example, is aimed primarily at ISPs, CLECs, and IXCs serving residential and small business customers and can be provided on any loop that meets certain minimum criteria.[23] Likewise, cable modem service is of greatest interest to mass market consumers.

Similarly, many non-ILEC service providers are deploying advanced telecommunications capability solely or predominantly in urban areas. This, too, should be expected.[24] It can be expensive to invest in the infrastructure needed to provide such services. Accordingly, it is rational to build the infrastructure first in areas where demand is likely to be greatest and unit costs are likely to decline most quickly. Once economies of scale and scope are captured, infrastructure can be extended to less densely populated locations.

All in all, GTE believes that the marketplace is capable of assuring that advanced telecommunications capability meets existing and forecasted demand from all classes of customers (including schools and libraries). Capacity shortfalls, to the extent they exist,[25] are inevitable in any market with rapidly expanding demand. Without fail, however, in telecommunications as in other industries, the supply of new technologies

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[23] GTE plans to deploy ADSL service in portions of 14 states.

[24] Of course, the incentive to deploy competitive facilities in urban areas and to defer deployment in rural areas is artificially strengthened by geographic averaging of the ILEC's retail rates. If rates in rural areas were permitted to reflect underlying costs, CLECs would have much stronger incentives to invest in competitive facilities. Accordingly, as discussed in Section III.B, below, the Commission and states should work together to transition to geographically deaveraged retail rates, with targeted high-cost support available to offset any affordability concerns.

[25] *See, e.g.*, NOI, ¶¶ 25, 33.

becomes commensurate with customer demand in a timely manner. The best way to assure prompt deployment of facilities to ameliorate temporary capacity constraints is to permit all competitors to respond quickly, unburdened by undue regulatory compliance costs, prior approval requirements, or other disincentives to investment.

Consequently, the Commission should not include particular advanced services within the basic universal service package.[26] It is abundantly clear that no advanced service comes close to meeting the statutory definition of "universal service."[27] No such service is "essential to education, public health, or public safety," and none has been "subscribed to by a substantial majority of residential customers."

Likewise, no action by the Commission is needed to assure that advanced services are made available to schools and libraries.[28] GTE believes that private investment already is meeting many of the needs of the education community. Moreover, to the extent a specific advanced service is a "telecommunications service," existing rules, regulations and programs already assure that any school or library desiring such a service receives it at the appropriate discount.[29] To the extent such a service is not a telecommunications service, it will be made available through the normal functioning of the market.

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[26] NOI, ¶ 73.

[27] 47 U.S.C. § 254(c)(1)

[28] 1996 Act, § 706(b); NOI, ¶¶ 64, 72.

[29] *See generally* 47 C.F.R. §§ 54.500-54.517.

Nor, at this time, should the Commission compel any particular carrier to offer specific capabilities in particular areas[30] or establish a definitive schedule for deployment of advanced telecommunications capability.[31] It should reject, for example, APT's recommendation that the Commission place conditions on mergers and acquisitions compelling deployment in inner cities or low-income rural areas.[32] Such conditions could not be justified under Sections 214 or 310 of the Act, since they would bear no nexus to the merger itself. In addition, even if the conditions could be justified under the appropriate statutory standard, they would apply only to the subject parties, imposing unique costs and interfering with other investment plans.[33]

In any event, it is premature to assume that the competitors acting with appropriate incentives in a free marketplace will fail to deploy advanced

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[30] For example, investment in and deployment of advanced telecommunications capability would not be promoted, and could well be harmed, by compelling ILECs to lease dark fiber. *See* NOI, ¶ 23. While GTE provides dark fiber leases where required to do so by order of state commissions, it continues to believe that dark fiber simply is not an unbundled network element because, by definition, it is not "used in" providing telecommunications services. *See* 47 U.S.C. § 153(29). In addition, most of GTE's dark fiber is held for identified or anticipated future demand, so compelling GTE to lease that fiber to another carrier would simply shift the obligation to invest in additional capacity from new entrants to GTE. Moreover, treating dark fiber as a network element, to be provided at hypothetical forward-looking cost, would create perverse incentives for new entrants to lease dark fiber from GTE rather than invest in their own facilities, actually diminishing the potential supply of advanced telecommunications capability.

[31] *See* NOI, ¶ 59.

[32] NOI, ¶ 71.

[33] In contrast, GTE agrees with APT that encouraging community-based organizations to create a "demand pull" could expedite the deployment of advanced telecommunications capability in low-income areas. *See* NOI, ¶ 71.

telecommunications capability wherever demand exists. Before making any such determination, the Commission must allow the market to operate unimpeded by regulatory intrusion. Only if advanced telecommunications capability has not been deployed where demand exists after a reasonable period of time (e.g., three to five years), should the Commission intervene to determine why demand is not being met and how the situation can be rectified.[34]

In the next section of these Comments, GTE details its specific recommendations for removing regulatory barriers to investment. GTE respectfully submits that eliminating these unwarranted obstacles is the most effective and desirable means of advancing the goals incorporated in Section 706(b).

III. THE COMMISSION CAN BEST PROMOTE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY THROUGH DEREGULATION OF ADVANCED TELECOMMUNICATIONS SERVICES, SYMMETRICAL TREATMENT OF ALL COMPETITORS, AND ELIMINATION OF OTHER REGULATORY DISINCENTIVES TO INVESTMENT.

The NOI specifically recognizes that government regulation may be a barrier to deployment of advanced telecommunications capability and asks for recommendations as to specific regulatory "techniques" for eliminating any regulatory disincentive to investment.[35] GTE commends the Commission for this recognition. The simple fact is,

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[34] To the extent the Commission compels service providers to deploy facilities in particular locations, such a public policy initiative should be funded through a broad-based, explicit, competitively neutral mechanism that is visible to the public. This will help assure that such an initiative is truly needed. *See* note 7, *supra*.

[35] NOI, ¶¶ 66-72, 77-82.

the most serious obstacle to the ubiquitous deployment of advanced technology and services is the burdensome and asymmetrical regulation of incumbent LECs. As detailed below in Section III.A, such disparate treatment of ILECs undermines investment incentives. Section III.B contains GTE's specific recommendations for eliminating regulatory barriers to investment in advanced telecommunications capability and services.

A. Asymmetric Regulation of ILEC Advanced Service Offerings Undermines the Goals of Section 706.

In paragraph 77 of the NOI, the Commission seeks comment regarding "the basic legal and regulatory model that will best foster the deployment of advanced telecommunications capability."[36] The answer to this inquiry is clear: all providers of advanced services should be deregulated to the greatest possible extent and, to the extent any residual regulation is necessary, should be subject to symmetrical obligations. The existing approach, under which ILECs alone are subject to burdensome rate regulation and separate affiliate requirements, and are compelled to make the results of their innovation and investment available to competitors at hypothetical forward-looking cost, is wholly inconsistent with the goals of Section 706.

Under today's model, as set forth just last month in the *706 MO&O and NPRM*,[37] ILECs have little incentive to invest in advanced telecommunications capability and little

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[36] NOI, ¶ 77.

[37] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 98-188 (released Aug. 7, 1998).

ability to compete in providing advanced telecommunications services. For example, if GTE provides an advanced service through its ILEC, it is subject to dominant carrier regulation, including tariffing and advance notice requirements[38] – even though it has no market power in providing the service. It must unbundle, and provide at cost, access to any packet switches, DSLAMs, and other non-bottleneck equipment used in providing the advanced service[39] – even though such equipment is available in the marketplace to any competitor on the same terms as it is available to GTE's ILECs.[40] And, it must offer the advanced service at a wholesale discount to its competitors, to the extent that the service is provided to subscribers which are not telecommunications carriers[41] – even though any competitor is free to offer the same advanced service using its own facilities or unbundled loops obtained from the ILEC. Under these circumstances, the ILEC has little incentive to invest in advanced telecommunications

[38] *See generally* 47 C.F.R. Part 61.

[39] *706 MO&O and NPRM*, ¶ 57. GTE notes that, even if the Commission were correct that xDSL electronics are unbundled network elements, it could not lawfully require ILECs to provide an unbundled loop/electronics platform. *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *petition for cert. granted* (invalidating FCC rule requiring ILECs to offer combinations of network elements).

[40] As a result, the unbundling requirement places the capital risk of deploying advanced equipment on the ILEC's shareholders, rather than on the CLEC that is using that equipment to provide advanced services. If demand falls short of the CLEC's expectations, or the CLEC's product offering is inferior, it can simply discontinue purchasing the DSLAM (for example). To assure prudent investment and encourage innovation, the capital risk of investment must be borne by the service provider.

[41] *706 MO&O and NPRM* at ¶¶ 60-61, 188-189.

capability;[42] the Commission essentially has assured that there is no way the ILEC can secure a competitive advantage in the marketplace, even if it is more efficient and innovative than its competitors.

The separate affiliate option offered in the *NPRM* is equally unattractive. Quite simply, in exchange for being permitted to provide advanced services on a non-dominant, non-ILEC basis, GTE would have to sacrifice virtually all integration efficiencies and incur massive costs of duplicating in the hyper-separated affiliate functions that could be obtained from the ILEC on a non-discriminatory basis. Moreover, to the extent that the ILEC is required to unbundle equipment used in the provision of advanced services, and deploy such equipment at the demand of CLECs, the separate affiliate option is simply untenable.

In addition, depending on the precise scope of the final rules, the affiliate might even be prohibited from obtaining services and network elements from the ILEC, even though every other service provider would be free to do so.[43] Burdened with significant regulatory compliance costs and operating under unique disabilities, there is little hope that the affiliate could succeed in the marketplace competing against the likes of the AT&T, MCI/WorldCom, and Sprint combines and the major cable MSOs, none of which

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[42] Notably, GTE's existing ILEC ADSL offering was introduced prior to adoption of the *MO&O*.

[43] As GTE will explain fully in its comments on the *NPRM*, such proposals violate the Act and the *Iowa Utilities Board* decision by compelling the ILEC to discriminate against the advanced services affiliate and to extend better service to unaffiliated entities than it is permitted to supply to its affiliates.

faces similar obstacles. Under such circumstances, the affiliate's incentive to invest in advanced technology is significantly and artificially depressed.

To promote deployment of advanced telecommunications capability by *all* potential competitors, the Commission must treat all providers of advanced services equally. There is no sound basis for treating high-speed Internet access service one way when offered by an ILEC using a telephony modem (that is, as a bottleneck monopoly service subject to full-fledged Title II regulation) and a different way when offered by a cable company using a cable modem (that is, as a competitive "information" service exempt from Title II regulation). ADSL and cable modems are substitutable, but only ADSL is subject to the disincentives of tariffing, unbundling, and resale, simply because of the historical regulatory status of the ILEC as a common carrier.[44] Likewise, broadband transmission capacity offered by an ILEC in a competitive market should be treated no different than broadband transmission capacity offered by an electric utility, a wireless service provider, or a CLEC fiber network in that same market.[45]

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[44] Clearly, if ILECs remain subject to unbundling obligations for their ADSL offerings, then there is no basis for failing to extend such obligations to cable modem service offered by a company like AT&T/TCG/TCI. *See Cable Over Internet*, pages 94-96 (discussing proposed requirement that cable companies provide unbundled access to basic transmission capacity).

[45] *See, e.g.*, Public Notice, "Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, DA 98-1712 (Aug. 28, 1998); "U S West Wants FCC to Declare It 'Non-Dominant' in Phoenix," *Communications Daily*, August 25, 1998, at 1 (reporting a statement by a senior U S WEST executive that competing providers have captured greater than 70 percent of the retail market for dedicated high capacity service in Phoenix).

There can be no "bottleneck" for advanced services that either do not yet exist or can be provided by any competitor on equal terms. By statute, ILEC facilities that are even arguably "essential" – primarily local loops – must be unbundled for all competitors on a nondiscriminatory basis.[46] (Of course, under section 251(c)(3), loops must be unbundled only "for the provision of a telecommunications service," not for cable or information services.) Once such facilities are available – as they are in every GTE service territory – any competitor can offer advanced services that utilize those facilities as an input and the ILEC enjoys no undue advantage.

Under these circumstances, regulation that favors or disfavors a particular competitor simply because of its status (e.g., ILEC, CLEC, ISP, MVPD) creates destructive marketplace distortions that deter investment and shift the risks of technology and service deployment to the disfavored class of competitors. These distortions, in turn, give rise to constituencies seeking to perpetuate disparate regulation in order to preserve an artificial competitive advantage. Clearly, the pleas of companies such as AT&T/TCG/TCI/BT, MCI/WorldCom/Brooks/MFS/UUNet, and Sprint/Deutsche Telekom/France Telecom for continued regulatory shackles on the

[46] 47 U.S.C. § 251(c)(3). Even local loops are ceasing to be bottleneck facilities for certain customers in many locations. In every medium-sized to large city served by GTE, at least one CLEC (and in some cases several) has constructed fiber facilities connecting to many businesses. Over time, these facilities will reach even more businesses and be extended to less populated areas. CLECs also are building fiber to some residential developments, cable companies are offering voice over coax or hybrid fiber/coax systems, and wireless service providers are already beginning to compete in the local exchange market. Each of these entities bypasses the ILEC loop entirely. Under such circumstances, there is no basis for continuing to subject ILECs alone to unbundling requirements for their loops.

ILECs' offering of advanced services must be rejected as contrary to Section 706 and sound public policy.

B. The Commission Should Immediately Remove Barriers to Investment Resulting from Disparate Regulation of ILECs.

To promote the broadest possible deployment of advanced telecommunications capability, and thereby enhance the availability of the advanced services provided over that technology, the Commission should deregulate ILEC provision of advanced services and take other steps to assure minimal, and symmetrical, regulation of all service providers, regardless of their nominal categorization. Specifically, the Commission should act consistent with the following recommendations.

- Forbear from requiring ILECs to tariff advanced services. CLECs, cable companies, CMRS providers, satellite service providers, and electric utilities do not need to tariff advanced services. ILECs, in contrast, must not only tariff such offerings, but provide advance notice to all of their competitors regarding their rates and promotions. This requirement is profoundly anticompetitive, since it facilitates tacit price collusion among competing providers and permits those companies to delay the introduction of advanced services by the ILEC through meritless regulatory challenges. It also imposes unwarranted costs on ILECs, which are not borne by any of its competitors.

- State that DSLAMs and other non-bottleneck equipment need not be provided to competitors on an unbundled basis. The Commission's blanket statement that all ILEC equipment used to provide advanced services are network elements and may be subject to unbundling is erroneous as a matter of law and directly contrary to

the goal of encouraging ILEC investment in advanced technology. All providers of advanced services should obtain equipment on the free market on equal terms.[47]

- Hold that ILECs need not make advanced services available for discounted resale. As GTE will explain in its comments on the *NPRM*, there is no statutory or policy basis for requiring ILECs to provide advanced services at a discount to their competitors. This requirement plainly discourages investment by both ILECs and other providers in the market.

- Decline to adopt the hyper-separation requirements proposed in the *NPRM* and instead apply the modified 5th *Report and Order* safeguards to ILEC advanced service affiliates. As discussed above, the separate affiliate "option" proposed in the NPRM will not enable the ILEC's affiliate to compete against other providers, including the giant, and effectively unregulated, AT&T, MCI/WorldCom, and Sprint combines. GTE's comments on the *NPRM* will demonstrate that the proposed separation requirements are contrary to law, inconsistent with Commission precedent, unduly burdensome, and grossly overbroad. For purposes of this proceeding, however, it is worth re-emphasizing that none of GTE's competitors in the advanced services market – including the very largest telecommunications and cable television companies in the world, most of which have greater resources than GTE – is compelled to provide any service through any kind of separate affiliate.

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[47] Even if the Commission were correct that such equipment may be classified as network elements, the imposition of unbundling requirements would be contrary to sections 251(d) and 706. GTE will further address this issue in its comments concerning ¶ 180 of the *706 NPRM*.

- Decline to impose additional restrictions on interactions between ISPs and ILECs. The NOI inquires what, if anything, the Commission should do to promote provisioning of xDSL services by ILECs that does not bundle or direct customers to an affiliated ISP,[48] and similarly asks "whether interactions between ISPs and providers of last miles will require regulatory intervention."[49] The Commission must resist the temptation to impose even greater constraints on interactions between ILECs and ISPs. Clearly, there is no reason to believe that the existing panoply of regulations governing such interactions – including the *Computer III*, *ONA*, affiliate transaction, CPNI, and network disclosure rules – requires supplementation to be effective. After all, the recent *Internet over Cable* Report states that there are more than 4800 ISPs in the United States,[50] and this number keeps growing.

In addition, the Commission's assumption that xDSL services are bottlenecks is untenable.[51] The *Internet over Cable* report details the tremendous technical capabilities and increasingly widespread deployment of cable modem service, which can transmit information at rates far greater than ADSL.[52] In addition, a multitude of

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[48] *Id.*, ¶ 38.

[49] *Id.*, ¶ 79.

[50] *Internet over Cable*, page 18.

[51] As explained in Section III.A above, the electronic equipment needed to provide advanced services is readily available, and ILECs already must provide conditioned loops on an unbundled basis and permit collocation of the equipment in their central offices.

[52] *Internet over Cable*, pages 75-80.

CLECs, in their oppositions to the various RBOC 706 petitions, trumpeted the capabilities and ubiquity of own xDSL offerings.[53] Of course, there are also many other sources for high-speed Internet access, including a variety of terrestrial wireless and satellite services.[54]

In short, the ILECs have no chokehold on high-speed Internet access and, indeed, are relative newcomers to the market. Moreover, such potent competitors as AT&T/TCG/TCI/BT and MCI/WorldCom/MFS/Brooks/UUNet do not suffer from limitations on bundling or jointly marketing high-speed access and ISP offerings. Accordingly, there is no justification for placing still further restraints on the ability of ILECs (or their CLEC and ISP affiliates) to do the same.

- Remove economic disincentives to upgrading the "last mile." Existing ILEC facilities used to provide the "last mile" to the customer have been efficiently designed and engineered (through the use of digital loop carrier, bridge taps, and the like) to transmit basic voice grade services. To encourage modification and upgrades of the voice grade network to support advanced telecommunications capabilities, the Commission and state PUCs will have to establish a pricing framework that provides

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[53] *See, e.g.*, petition of the Association for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78, at 4 (filed May 27, 1998) ("CLECs ... are at the forefront in deploying new digital subscriber line ('xDSL') technologies"); *id.* at 9 ("CLECs are aggressively providing digital services throughout the nation using xDSL and other technologies.").

[54] *See* Section II.A, *supra*.

the correct economic incentives for incumbents and new entrants alike, including a reasonable opportunity to earn a sufficient return on their investment.

Providing such an opportunity in a competitive environment means permitting local residential rates to reflect underlying costs and assuring that unbundled loop prices reflect the costs of provisioning an actual (not hypothetical) advanced telecommunications network. If local rates or UNE prices are set too low, neither the ILEC nor other providers will have an incentive either to upgrade the network or deploy new facilities. Ubiquitous deployment of advanced telecommunications capabilities in both residential and business markets can be achieved only if the pricing of such capabilities and all inputs provides compensation commensurate with the risks incurred. The APT Petition referenced in the NOI underscores these points and accurately depicts the response of competitors to appropriate economic signals.[55]

Along these same lines, geographic rate averaging at the state level and remaining limitations on deaveraging in interstate access tariffs plainly deter investment in competitive facilities in relatively high-cost rural areas while encouraging over-investment in relatively low-cost urban areas. From the perspective of a new entrant, there is no rational justification for investing in rural areas because the ILEC's retail rates are capped below cost, rendering it virtually impossible to compete. From the ILEC's perspective, the incentive to invest in rural areas is similarly blunted because the cost of doing so cannot be reflected in the rates for services. By eliminating regulatory constraints on geographic rate averaging (while reforming universal service support to

[55] *See* NOI, ¶ 72.

address any affordability concerns), the Commission and state PUCs can restore appropriate investment incentives. In all likelihood, such action would jump-start deployment of advanced telecommunications capability and services in rural areas.

- Preempt state regulation that prevents or impedes competition by ILECs. While most states have welcomed competition by affiliates of ILECs, a very few, for procedural or other reasons, have declined to authorize CLEC affiliates of an ILEC to operate in-region. Such failure is a direct violation of Section 253 of the Act. Under the Commission's rules, the ILEC cannot directly offer interexchange or CMRS services, but a separate affiliate may do so. Thus, to meet consumer demand for integrated packages of services, including advanced services, an ILEC's parent must offer advanced services through the separate affiliate as well. Consequently, state decisions prohibiting a separate, in-franchise affiliate of the ILEC from offering local exchange services effectively prevent competition by a vital participant in the bundled service market. While the Commission is correct that it must "cooperate" with state commissions in removing barriers to infrastructure investment,[56] it must also preempt state regulations that "prohibit or have the effect of prohibiting" the provision of advanced (or any other) services, as specifically provided in Section 253(d) of the Act.[57]

- Assure that all providers of advanced services have nondiscriminatory access to new, high-bandwidth spectrum. It is likely that additional spectrum will be either

[56] NOI, ¶ 83, citing 1996 Act, Section 706(a).

[57] 47 U.S.C. § 253(d).

required or made available for high-bandwidth wireless services.[58] The principle of symmetric, minimally intrusive regulation requires that all service providers have access to that spectrum without regard to ILEC status or spectrum cap limitations applicable to existing CMRS services. There is no rational justification for restricting ILECs' access to this new spectrum.

- Permit ILECs to introduce new switched access services without first petitioning for approval of new rate elements. Under the current access charge rules, an ILEC seeking to introduce a new switched access service must first file a petition demonstrating that the establishment of a new rate element or elements would be in the public interest.[59] This requirement permits the ILEC's competitors to delay the introduction of a new service by filing meritless oppositions to the petition. No other class of competitors, of course, is subject to such regulatory gamesmanship. The Commission should eliminate this obstacle to innovation and competition by permitting ILECs to introduce new switched access rate elements as needed to accommodate new services, just as is the case for special access.

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[58] Public Notice, "Commission Staff Seeks Comment on Spectrum Issues Related to Third Generation Wireless/IMT-2000," DA 98-1703, Report No. IN-98-48 (Aug. 26, 1998).

[59] 47 C.F.R. § 69.4(g)(i) (1997). Under section 69.4(g)(ii), a petition is also necessary even if another ILEC has obtained authority to add a new rate element, although the required showing is somewhat different.

By promoting symmetric regulation of all entities offering advanced services, these actions will go a long way toward eliminating disincentives to ILEC investment in advanced telecommunications capability and deployment of advanced services.

IV. CONCLUSION

The NOI proceeds from the appropriate premise: that maximum reliance on the free market and private enterprise will result in "reasonable and timely" deployment of advanced telecommunications capability. A multitude of providers, using a broad diversity of delivery platforms, is bringing a plethora of advanced services to market. Notably, these services are not aimed solely at businesses in urban areas. GTE, other ILECs, and cable companies are all offering high-bandwidth services to residential and small business customers both within and outside major population centers. There is, therefore, no evidence of market failure that necessitates affirmative regulatory action.

This is not to say, however, that the regulatory environment today is consistent with the NOI's free-market premise; it clearly is not. Notwithstanding the intense competitiveness of advanced services markets, the fact that many competitors are global, vertically integrated companies with tremendous financial and technical resources, and the unconstrained availability of virtually all necessary inputs, a single category of competitors – the ILECs – continues to labor under highly burdensome and intrusive regulation. This regulatory asymmetry is unquestionably destructive. It distorts incentives for ILECs and their competitors alike and deters investment, particularly in rural and other high cost areas.

Continued disparate treatment of ILEC advanced services offerings is antithetical to Congress's goals in enacting Section 706 of the 1996 Act. The Commission therefore should promptly take the actions discussed above to assure that (1) all providers of advanced services are deregulated to the greatest possible extent and treated the same, and (2) no new disabilities are placed on ILECs as they strive to compete against the huge AT&T, MCI/WorldCom, and Sprint combines and cable MSOs. By accepting GTE's recommendations, the Commission will expedite the deployment of advanced telecommunications capability and services to all classes of customers and geographic areas and implement the will of Congress.

Respectfully submitted,

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